upon this precise point. One of the covenants in a deed of sale of the corporate property of a street railway company was that the purchaser corporation would assume and discharge all the obligations and liabilities of the seller. Relying upon this agreement, the plaintiff sued the buyer for a tort committed by the seller when in possession of the premises. The court held that this agreement could not give a right of action to one not a party to such agreement. *Capital Traction Co.* v. *Offutt*, 29 Washington Law Reports, 18 (Jan. 10). Had the plaintiff sued in a jurisdiction which adopts the rule in *Lawrence* v. *Fox* he might well have been allowed to recover. Here was a duty owing to the plaintiff from the promisee, and the contract was apparently intended to benefit the plaintiff; thus it would be within the decisions of those courts which limit the doctrine most strictly. *Durnherr* v. *Rau*, 135 N. Y. 219. That the liability owing from the promisee to the beneficiary was for a tort rather than upon a contract would seem to make no difference on principle. There was an asset in either case. Yet upon this exact point of allowing one with a claim for a tort to sue as beneficiary on a contract, according to the doctrine of *Lawrence* v. *Fox*, no direct authority has been found.

QUO WARRANTO AGAINST A COLLEGE. — While an incorporated educational institution is entitled to the same general rights and subject to the same general liabilities as are ordinary business corporations, yet from its retired and charitable nature it is less likely than are bodies of a more worldly character to exceed its powers, or, if it does so, to prove harmful to the public. For these reasons, and because of the value of such corporations to society, we find few instances in which a state has been willing to oust a college of its right to be a corporation. A late case in Ohio, however, shows that there are occasions where a college has so abused or neglected its franchise as to justify a forfeiture of its charter. *State* v. *Mt. Hope College Co.*, 58 N. E. Rep. 799. The trustees of the college had leased it to a man who was to act as president and to have sole control of its affairs. He proceeded to confer degrees, signed by the trustees and left in his hands for that purpose, upon the payment of stipulated sums, and the performance of a merely nominal amount of work, — sometimes even upon the applicant's promise to do the work in the future. No attendance was required, and no examinations held. The court ousted the college of its right to be a corporation, refusing to limit its judgment to an ouster merely of the powers wrongfully abused.

Every corporation is limited in its action to the powers conferred in its charter, and there is, moreover, a tacit understanding that the corporation shall exercise those powers in such a manner as to accomplish the design for which it was incorporated. Angell & Ames, Corporations, 11th ed. § 774. Any act done outside its powers or in abuse or neglect of its franchise may expose the corporation to the loss of its charter at the hands of the state. But unless there is a special provision in the charter that a certain act or omission shall be a cause of forfeiture, the court before which the *quo warranto* proceedings are brought has full discretion to render such a judgment as will meet the ends of justice and best subserve the interests of the public. Accordingly, where there has been a substantial performance of conditions, or where the abuse complained of is the result of mere mistake, accident, or misfortune, a court generally

will not decree a forfeiture. *State* v. *Farmers' College*, 32 Ohio St. 487. And where circumstances make it desirable, the court can adopt the middle course of ousting the corporation merely from the performance of the wrongful acts, allowing it to continue in the general exercise of its franchise. *State* v. *Benefit Association*, 42 Ohio St. 579. A judgment of ouster of the right to be a corporation is an extreme penalty, especially against educational or charitable institutions, and is justified only where the act or omission is expressly made a cause of forfeiture, or where there has been some wilful abuse or improper neglect of some part of the corporate franchise in which the public has an interest. Mere non-user of the franchise may occur under circumstances which will justify this extreme penalty. *Edgar Collegiate Institute* v. *People*, 142 Ill. 363. And where there has been such gross abuse as appeared in the principal case, there can be little doubt that the charter should be taken away. The selling of degrees is a clear abuse of the power to confer them, and is a distinct fraud upon the public justifying the extreme penalty. *Illinois Health University* v. *People*, 166 Ill. 171; *Independent Medical College* v. *People*, 182 Ill. 274. Even if direct participation in this could not be brought home to the trustees, yet they were clearly guilty of an unwarrantable neglect of a duty owing to the state. Public sentiment at the present day demands a reasonably high standard in educational institutions, and it is well for such corporations to remember that they are not exempt from the penalty of civil death.

PAROL AGREEMENTS TO SAVE HARMLESS ON COVENANTS. — That parol agreements which vary the express promises of a deed will not be recognized is a well-settled doctrine. A parol promise as consideration for a deed, however, which does not vary the covenantor's promise, may be shown, although differing from the consideration expressed in the instrument. Whether or not recognition will be accorded to a parol agreement which, while in terms it does not contradict the deed, yet negatives its effect by providing that the covenantee shall be saved harmless from all liability under its covenants, is an extremely doubtful question. The point is suggested by a recent Texas decision. *Johnson* v. *Elmen*, 59 S. W. Rep. 253. The defendant conveyed land to the plaintiff with an implied warranty against incumbrances. At the time there were outstanding against the defendant two notes which constituted a vendor's lien on the land. The plaintiff undertook to pay off these notes as part payment, and at his request no mention of them was made in the deed. He failed to pay, and the land was sold by foreclosure. He then brought an action on the covenant against incumbrances. The court held that the defendant's parol promise defeated the action, its effect being not to except the incumbrance from the terms of the covenant, but to show that, as between the parties, it had been discharged at the time of the conveyance, so that there had been no breach. While the decision in its reasoning is in accord with a majority of the few decisions in point, if it is to be supported otherwise than as an exception to the parol evidence rule, it must be on the ground that the plaintiff promised to save the defendant harmless from any liabilities under his covenant. *Blood* v. *Wilkins*, 43 Iowa, 565. For at the time the warranty was made the incumbrance as a matter of fact existed, and to hold it discharged as between